

**CERTIFIED FOR PUBLICATION**

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

C. R.,

Plaintiff and Appellant,

v.

TENET HEALTHCARE  
CORPORATION,

Defendant and Respondent.

B201220

(Super. Ct. No. BC364189)

MODIFICATION ORDER;  
ORDERS DENYING REHEARING  
PETITION AND DEPUBLICATION  
REQUEST  
[NO CHANGE IN JUDGMENT]

THE COURT:

It is ordered that the opinion filed herein on January 5, 2009, be modified as follows:

1. On page 2 in the second line of the first paragraph, delete the text: “her demurrer” and insert the text “its demurrer”.
2. On page 2, in the second paragraph after Code, insert a new footnote No. 1.
3. On page 2 at the bottom of the page, the new footnote No. 1 is to state:  
Unless otherwise noted, all statutory references are to the Civil Code.
4. On page 3, line 3, delete “retaliation” insert in its place “ratification”.
5. On page 3, line 14, after the quotation marks, insert the text “Thirty-two of the 72 paragraphs which apply to plaintiff’s section 51.9 cause of action allege Mr. Gaspar was defendant’s agent or employee.”
6. On page 5 in the second line, delete the footnote reference.

7. At the bottom of page 5, delete the footnote.
8. On page 11, line 2, after “establish” insert “as”.
9. On page 11, in the third sentence of the second paragraph, delete “negative” and insert “negate”.
10. On page 11, line 22 (the seventh line from the bottom of the page) change “to the Mr.” and insert “to Mr.”
11. On page 13, line 4, delete the period immediately after “Reg.”
12. On page 13, line 4, replace “Bill No. 613” with “Bill No. 612”.
13. On page 14, in the second sentence of the first paragraph, after the quotation marks, delete “a”.
14. On page 14, in the third sentence of the second paragraph delete everything after “exists” and insert the text: “. Depending on the facts, a certified nurse assistant can have a service or professional relationship with a patient as can other hospital staff. It depends on the facts. Here, it is expressly alleged Mr. Gaspar, as defendant’s employee or agent, had responsibilities which were substantially similar to those provided by a physician. Mr. Gaspar’s exact duties and his relationship with women who were patients can be fully litigated in a summary judgment proceeding or trial.”
15. On page 14, at the end of the third paragraph, insert the text “Thus, at this stage of the proceedings, plaintiff has alleged sufficient facts to show defendant, a hospital owner which provides medical treatment for patients, falls within the scope of section 51.9.”
16. On page 14, in the second sentence of the third paragraph, delete “an indicia” and insert “the indicia”.
17. On page 14, in the second sentence of the third paragraph, delete “he superior” and insert “the superior”.
18. On the first line of page 17, delete “new a” and insert “a new”.
19. In the second full sentence on page 18, delete “in the several” and insert “in several”.

20. In the first line of the second paragraph on page 19, before “a” insert “is”.
21. In the second paragraph on page 19, delete: “We need not address the issue of respondent superior.”
22. On page 22, in the second sentence of the third paragraph, after the colon, insert: “Mr. Gaspar was an agent and employee of defendant; Mr. Gaspar was acting at all times on behalf of defendant;”

Defendant’s rehearing petition and depublication request are denied.

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TURNER, P.J.

MOSK, J.

KRIEGLER, J.